



U.S. Citizenship
and Immigration
Services

BH

FILE:

Office: NEBRASKAA SERVICE CENTER

Date:

AUG 20 2004

IN RE:

Petitioner:

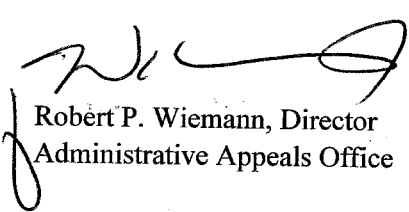
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The director denied the employment-based preference visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed. The petition will be denied.

The petitioner is a Missouri corporation that seeks to employ the beneficiary as its business development manager. The petitioner, therefore, endeavors to classify him as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the proffered position is not in an executive or managerial capacity. On appeal, the petitioner's prior counsel had indicated that a brief and/or additional evidence would be submitted to the AAO; however, the AAO never received the evidence and it summarily dismissed the appeal. On motion, counsel submits a brief and additional evidence.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete motion within 30 days of the decision that the motion seeks to reopen or reconsider. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the AAO issued the decision on February 27, 2003. It is noted that the AAO properly gave notice to the petitioner that it had 30 days to file a motion. Counsel dated the motion April 19, 2003; it was received by Citizenship and Immigration Services (CIS) on April 22, 2003, or 54 days after the decision was issued. Accordingly, the motion was untimely filed.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). However, CIS may, in its discretion, excuse the failure to file a motion within the proscribed period where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). On motion, counsel states that the delay in filing was beyond the control of the petitioner and the beneficiary and was caused "exclusively to the extensive deadlines recently experienced by the undersigned, principally due to the need to comply with the 'Special Registration' requirements of well more than 100 clients from the Middle East and South Asia, which were recently imposed by Regulation." Nevertheless, the AAO will not excuse the untimely filing of the motion. Accordingly, the motion will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the Administrative Appeals Office, dated February 27, 2003, is affirmed. The petition is denied.